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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ELEAZAR VICTOR OLMEDO, Petitioner - Appellant, v. **ROBERT J. HERNANDEZ, Esq., Warden**, Respondent - Appellee.	No. 05-55808 D.C. No. CV-03-09507-DDP **MEMORANDUM**[*]

Appeal from the United States District Court
for the Central District of California
Dean D. Pregerson, District Judge, Presiding

Submitted June 9, 2006[**]
Pasadena, California

Before: **KOZINSKI** and **GOULD**, Circuit Judges, and **MARTINEZ**[***], District Judge.

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[*] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

[**] This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

[***] The Honorable Ricardo S. Martinez, United States District Judge for the Western District of Washington, sitting by designation.

Petitioner contends that his thirty-years-to-life sentence for first-degree residential burglary violates the Cruel and Unusual Punishment Clause of the Eighth Amendment because it is grossly disproportionate to his crime. Petitioner's triggering offense, breaking into his neighbor's home and removing his gardening tools, was inherently dangerous. Moreover, when the neighbors threatened to call the police, petitioner told them "he was going to bring his homeys"—a clear threat of violence. Petitioner had previously served time for three convictions for robbery and one for first-degree burglary. Although the most recent of his prior felonies was a decade old, he had hardly been law-abiding in the interim: He had been convicted of the unlawful taking or driving of a vehicle, being drunk in public, driving under the influence, and receiving stolen property.

Unlike the triggering offenses for the sentences found cruel and unusual in Reyes v. Brown, 399 F.3d 964, 965 (9th Cir. 2005) (committing perjury by taking a driver's license exam for a relative), and Ramirez v. Castro, 365 F.3d 755, 757–58 (9th Cir. 2004) (shoplifting a $199 VCR and peaceful surrender to authorities), petitioner's triggering offense was inherently dangerous, and he also implicitly threatened violence if the authorities were called.

In Lockyer v. Andrade, 538 U.S. 63, 77 (2003), the Supreme Court held that two consecutive sentences of twenty-five years to life for petty theft were not cruel

and unusual. Likewise, in Ewing v. California, 538 U.S. 11, 29–30 (2003), the Supreme Court held that a twenty-five-years-to-life sentence for grand theft of $1,200 of golf clubs was not cruel and unusual. Petitioner's crime—first-degree residential burglary—is at least as severe and as likely to be violent as grand theft or petty theft. We therefore cannot say that petitioner's sentence was "contrary to, or . . . an unreasonable application of, clearly established Federal law, as determined by the Supreme Court." 28 U.S.C. § 2254(d)(2).

AFFIRMED.